

## **INITIAL STATEMENT OF REASONS**

### **Proposed Amendments to California Code of Regulations (CCR) Title 2, Sections 599.502 and 599.506: Enrollment and Termination of Enrollment**

#### **Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is intended to Address:**

In March 2010, President Obama signed the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively the “Act”) into federal law, reforming the United States’ health care system. Some provisions in the Act became effective upon passage of the law, while other provisions will be phased in over the next one (1) to 10 years. Effective for “plan years” beginning on or after September 23, 2010, the Act prohibits group health plans offering group coverage from rescinding health coverage, except in cases of fraud or intentional misrepresentation of material facts.

On June 28, 2010, the U.S. Department of Health and Human Services (HHS) issued interim federal regulations for rescissions (see 26 CFR 54 and 602, 29, CFR 2590, 45 CFR 144, 146, and 147), in which rescissions are defined as a retroactive cancellation of coverage. In their Frequently Asked Questions, dated October 8, 2010, HHS clarified that plan errors, such as mistakenly covering a part-time employee whose reduction in hours or time base resulted in a loss or cancellation of coverage, may only be corrected prospectively, except in cases of fraud or intentional misrepresentation of material facts. In these instances, enrollees are required to receive a 30-day notice prior to the rescission. A 30-day notice would not be required in the case of other retroactive transactions because they do not meet the federal definition of a rescission. Examples of retroactive cancellations that are permitted and not considered a rescission include:

- Divorce
- Termination of Domestic Partnership
- Death
- Termination of Employment

The CalPERS provides health care benefits to State and contracting agency employees, annuitants, and eligible family members under the Public Employees’ Medical and Hospital Care Act (PEMHCA) in GC § 22750 et seq. Pursuant to State law and regulations, CalPERS can process retroactive cancellations of coverage under various circumstances, such as when an employee reduces his or her time base or hours. The Act and interim federal regulations prohibit CalPERS from administering rescissions due to reduction in hours or time base,

for the plan year that began January 1, 2011. The CCR § 599.502 and 599.506 must be amended to comply with these requirements.

The PEMHCA establishes rules, regulations and classifications for purposes of health coverage and enrollment eligibility. Under GC § 22772, the definition of “employee” specifically excludes “a person employed on an intermittent, irregular, or less than half-time basis, or an employee similarly situated.” In addition, pursuant to GC § 22794 and 22796, the Board has authority to exclude employees based on their type of employment, including short-term, seasonal, or intermittent employment. Under PEMHCA, if an employer fails through clerical error to terminate coverage of an employee who no longer meets these criteria, the employer can process retroactive cancellations of coverage back to the date of the permitting event and refund any excess premiums paid for a period of up to six months. Because federal law and regulations now prohibit this practice in the cases of employees reducing hours or time base that results in a loss of coverage, the proposed regulations are necessary for CalPERS to be in compliance. The proposed regulations allow retroactive terminations of coverage to be processed for employees who reduce their hours or time base only when coverage was obtained through fraud or intentional misrepresentation of material facts. In these instances, the employee or annuitant must receive a 30-day notice prior to the termination of coverage. Otherwise, a termination of coverage for a reduction in hours or time base must be made prospectively.

### **Specific Purpose:**

The CalPERS Board of Administration (Board) is specifically entitled under GC § 22800, to exclude employees based on the type of employment, including short-term, seasonal, or intermittent employment.

The Board proposes to amend regulations in CCR § 599.502 and adopt regulations in 599.506 to conform State regulations to the Act by stating that retroactive cancellations of coverage cannot be made for reduction in hours or time base, except in cases of fraud or intentional misrepresentation of material facts. Additionally, the employee or annuitant must receive a 30-day notice prior to the retroactive cancellation under this provision.

1) Section 599.502, subdivisions (a) through (f) subsection (1):

The CCR § 599.502, subdivisions (a) through (f) subsection (1), remain unchanged.

2) Proposed amendments to Section 599.502, subdivision (f) subsection (2):

Existing § 599.502, subdivision (f), contains language that relates to changes in enrollment. This section is amended to clarify that the

employer or employee may receive a refund for up to six months for the excess premiums paid, except as mentioned in the proposed new subdivision (f) of CCR § 599.506, regarding prohibitions on retroactive terminations of coverage for a reduction in hours or time base.

3) Section 599.502, subdivision (f) subsections (3) through (12):

The CCR § 599.502, subdivision (f) subsections (3) through (12), formerly subsections (3) through (11), remain unchanged with the exception of subdivision renumbering.

4) Proposed amendments to Section 599.502, subdivision (f) subsection (13):

The CCR § 599.502, subdivision (f) subsection (13), formerly subsection (12), has technical changes that renumber the subsection and align the subsection referenced within the paragraph with the proposed subsection renumbering.

5) Section 599.502, subdivisions (g) through (i):

The CCR § 599.502, subdivisions (g) through (i), remain unchanged.

6) Section 599.506, subdivisions (a) through (e):

The CCR § 599.506, subdivisions (a) through (e), remain unchanged.

7) Proposed new Section 599.506, subdivision (f):

The CCR § 599.506, subdivision (f) would state that when an employee reduces his or her hours or time base, a retroactive termination of coverage can only be made prospectively, except in cases of fraud or intentional misrepresentation of material facts. In these instances, a 30-day notice must be provided to the employee.

Necessity

The Board seeks to amend the above subdivisions in CCR § 599.502 and 599.506 to provide CalPERS the authority to enforce the new prohibition on rescissions prescribed by the Act and to ensure compliance with federal law and regulations (see 26 CFR 54 and 602, 29, CFR 2590, 45 CFR 144, 146, and 147).

Technical, Theoretical and/or Empirical Studies, Reports or Documents:

None.

Alternatives to the Regulatory Action and CalPERS Reasons for Rejecting those Alternatives:

Adoption of the proposed regulations mandate that the federal health care reform law, the Act, and pending amendments to CCR § 599.502 and 599.506 conform State law to federal law. As a result, no other alternatives were presented to, or considered by the Board.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses:

The proposed regulatory actions have no cost impact on either small businesses or on persons in the private sector.